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IN THE UNITED STATES DISTRICT COURT
11
FOR THE DISTRICT OF ALASKA AT ANCHORAGE
12

13 ENOCH ADAMS, JR., LEROY ADAMS,
ANDREW KOENIG, JERRY NORTON
14 DAVID SWAN and JOSEPH SWAN,

15 Plaintiffs,

16 v.

17 TECK COMINCO ALASKA INCORPORATED

18 Defendant.

19 NANA REGIONAL CORPORATION and
20 NORTHWEST ARCTIC BOROUGH,

21 Intervenors-Defendants.

Case No. A04-49 (JWS)

PLAINTIFFS' REPLY
IN SUPPORT OF
MOTION IN LIMINE TO
BAR TESTIMONY BY
CERTAIN PROFFERED
EXPERTS

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28 PLAINTIFFS' REPLY IN SUPPORT OF OBJECTIONS
TO EXPERT WITNESSES AND MOTION IN
LIMINE TO BAR CERTAIN EXPERTS

1 The Adams plaintiffs moved (at Docket 210) to bar the testimony of the experts proffered
2 by Teck Cominco for which it had not provided a statement of the expert's qualifications, in
3 violation of the Court's Pre-Trial Order, Docket 177 at 3. Underlying the motion was the
4 prejudice to Adams from not having any statements of qualifications for five of Teck Cominco's
5 proffered expert witnesses. Docket 210.

6 Teck Cominco was aware of this motion as it requested the Court allow it until February
7 19 to respond to it. Docket 229 at 2. The Court accordingly ordered that "Defendants shall file
8 and serve their responses to Plaintiffs' motions at docket 210... on or before February 19, 2008,
9 with any reply due on or before February 29, 2008." Docket 230 at 2.

10 Teck Cominco has not filed any response to the motion at Docket 210. Under Local Rule
11 7.1(d), failure to oppose a motion "subjects the motion to summary ruling by the court." If the
12 failure is by the opposing party, it "may be deemed an admission that... the motion is well taken."
13 D.Ak.L.R. 7.1(d). Teck Cominco's failure to abide the Court's Pre-Trial Order (Docket 177) and
14 Scheduling Order (Docket 230) lead Adams to respectfully request that the Court grant plaintiffs'
15 motion at Docket 210.

16 As Adams noted in its Motion, the Court has at least three options for dealing with Teck
17 Cominco's refusal to abide by the Court's Pre-Trial Order. It could preclude any of the experts
18 from testifying because Teck Cominco violated the Court Order and did not timely attach any
19 expert qualifications to its witness lists. It could preclude any of the experts from testifying at the
20 liability phase because Teck Cominco has not cured the failure to attach expert qualifications to
21 its Liability Phase Witness List, and bar those experts for whom Teck Cominco has never
22 provided expert qualifications from testifying at all. It could bar all testimony by those experts
23 listed on Teck Cominco's Penalty Phase Witness Lists for whom Teck Cominco has never
24 provided expert qualifications.

25 Adams's Proposed Order adopts the third option, although it would support any of the
26 three options. The third option would bar the following witnesses from testifying at the Penalty
27 Phase: John Houghton, John Middaugh, Fred DeCicco, Al Townsend and Phyllis Weber-

1 Scannell. Teck Cominco has provided no qualifications for any of these proffered experts, in
2 violation of the Court's Order, although it clearly knew it had to do so as it filed the late
3 qualifications for the other seven experts it listed. Adams respectfully requests that the Court
4 grant Adams's motion and, at very least, enter the Proposed Order adopting option three.

5 Respectfully submitted this 28th day of February, 2008.

6

7 /S/ Luke Cole

8 Luke Cole

9 Attorney for Plaintiffs

10 CERTIFICATE OF SERVICE

11 I hereby certify that on the 28th day of February 2008, a true and correct copy of the foregoing Reply in Support of Objections to
12 Expert Witnesses and Motion in Limine to Bar Testimony by Certain Proffered Experts, via electronic mail, on the below
13 identified parties of record:

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19 _____
20 /S/
21 _____
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